etc., is actually presented even though it is not then accepted by the court; and the fact that the plaint was registered on a later date does not affect the question of limitation. In other words, limitation is checked as soon as the plaint is presented to the proper officer and the fact that it was admitted and entered in the Register of Civil Suits after limitation ran out is immaterial. The suit is deemed instituted when the plaint is presented and not when the Collector's certificate under the Pensions Act, 1871 is filled.... An action is commenced when the plaint is filed although it is not duly signed or verified until subsequently."

Counsel for the defendant also cited the case of *Boota Singh* v. *Isman bin Haji Ali*.[2] In that case what the court was required to decide was whether the Limitation Ordinance ceases to run when the plaintiff requests the court clerk to prepare the summons or whether it continues to run until the summons is actually sealed and issued. There the plaintiff requested the court clerk to prepare the summons on 3rd August. The period of limitation expired on 15th August and the summons was sealed and issued on 19th August. The district judge held that the suit was instituted when the plaintiff requested the court clerk to prepare the summons on 3rd August and consequently ruled that the claim was not statute barred. The defendant appealed against the decision on the ground that the suit was not instituted within the meaning of section 3 of the Limitation Ordinance (Singapore Cap. 7). Section 3 of the Singapore Limitation Ordinance, as it was in the year 1957, reads as follows:

"Subject to sections 4 to 24, every suit instituted after the period of limitation prescribed therefor by the Schedule shall be dismissed, provided that limitation has been set up as a defence."

A distinction must be drawn between this section and our section 6(1) of our Limitation Ordinance. Section 6(1) envisages that "actions shall not be brought after the expiration of six years" whereas section 3 of the Singapore Ordinance envisages that "every suit instituted after the period of limitation... shall be dismissed." The expression "suit instituted" in section 3 of the Singapore Ordinance is synonymous with the words "action commenced" and Whyatt C.J., in allowing the appeal, ruled that the Limitation Ordinance continues to run until the summons is actually sealed and when the summons is sealed, it is deemed to be issued and the action is then commenced.

As I have stated above, there clearly is a distinction between the then Singapore Limitation Ordinance and our Limitation Ordinance, No. 4 of 1953. Under our Ordinance what the plaintiff is required to do is to bring about the action within six years from the date on which the cause of action accrued. He does so by filing in the appropriate court the summons and the statement of claim on the appropriate form and by paying the requisite fees. Once he has done this within the six year period, he is said to have brought the action within time. The sealing and the signing of the summons is entirely a matter for the court over which the plaintiff has no control and, if the court seals and signs the summons subsequently after the lapse of a few days, the fault for this can in no way be attributed to the plaintiff. In the present case, therefore, I must rule that the plaintiff by filing and presenting the statement of claim on 16th June, 1969, did so within the period of six years prescribed by section 6(1) of the Limitation Ordinance and as such the claim of the plaintiff is not statute barred.

For the aforesaid reasons the appeal will be allowed and the order of the Sessions Court dismissing the action on the ground that it was statute barred will be set aside. The costs of the appeal and the costs in the court below will be paid by the respondent to the appellant.

The action will be remitted to the Sessions Court for trial before another president on the other issues raised in the pleadings.

Appeal allowed.

Solicitors: *Devadas & Co.; Sault, Thara & Co.*

MALACCA MUNICIPALITY v. NG LEONG WAH

[R.Cr.J. (Pawan Ahmad J.) July 23, 1973]
[Malacca — Criminal Revision No. 5 of 1973]

Criminal Law and Procedure — Order for payment of compensation if complaint was "frivolous" or "vexatious" — Court must record reasons for making order — Whether order can be made against Government department or public authority which undertakes a prosecution — Criminal Procedure Code (S.S. Cap. 21), s. 185.

In this case the Malacca Municipality had instituted proceedings against the accused. Subsequently the prosecution was withdrawn and the accused was acquitted and discharged. Counsel for the accused applied for compensation and the learned President, Sessions Court, merely made the order "compensation of $25 awarded to the defendant" without setting out any reasons.

Held: (1) as the learned president had not recorded his reasons for making the order, the order must be set aside;

(2) an order for compensation can only be made if the court is satisfied that the complaint was frivolous or vexatious and the court can only come to a finding as to whether a complaint, is frivolous or vexatious, after having heard evidence on oath and not merely upon submissions by the parties;

(3) there is no provision for making any order of compensation under section 185 of the Criminal Procedure Code (Cap. 21) against a prosecuting department whose duty it is to prosecute offences disclosed on complaints made or information supplied by its officers or members of the public. Orders for compensation under section 185 can be made only against individuals, be they public officers or members of the public, and not against a Government department or public authority which undertakes a prosecution.

CRIMINAL REVISION.

Tan Lip Yip for the Malacca Municipality.

Pawan Ahmad J. (delivering oral judgment): Magistrate's Court Summons Case No. 1550/71 (*Malacca Municipality* v. *Ng Leong Wah*) was withdrawn by the prosecution on 1st December, 1971 and upon such withdrawal, the accused was acquitted and discharged. Counsel for the accused then made application for compensation under the provisions of section 185(1) of the Criminal Procedure Code (S.S.) (Cap. 21) which reads:

"If in any case the court acquits the accused and is of opinion that the complaint was frivolous or vexatious, it may, in its discretion, either on the application of the accused or on its own motion order the complainant or the person on whose information the complaint was made to pay to the accused, or to each or any of the accused where there are more than one, such compensation, not exceeding twenty-five dollars, as the court thinks fit.

Provided that the court —

(a) shall record and consider any objections which the complainant or informant may urge against the making of the order: and

(b) shall record its reasons for making such order."

On 29th January, 1972, the question of compensation came up for argument before the Magistrate's Court. Amongst other things, counsel for the accused submitted that the case brought about by the Municipality against the accused was "frivolous or vexatious." No evidence was called by the accused. Counsel for the Municipality, on the other hand, submitted that the case brought about by them was not frivolous or vexatious and that the summons was withdrawn because the Municipality had obtained its objective without having to proceed with the trial of the case.

The record indicates that the learned President, Sessions Court, who sat as magistrate, merely made the order "Compensation of $25 awarded to the defendant." Nowhere in the record has he recorded his reasons for making such order as he is required to do under the provisions of section 185(1) (b) of the Criminal Procedure Code (S.S.).

In the first place, it must be stated that in view of section 185(1) (b), it is mandatory for the court to record its reasons for making the order of compensation. Here I might quote a passage from *Sohoni's* Criminal Procedure Code, 16th Edition, Volume II, page 1688, under paragraph 35:

"The object of the legislature in requiring the magistrates to record their reasons is that the power given under the section should not be used indiscriminately and in order to enable a court of appeal or revision to judge the sufficiency of the grounds on which the order is based. In the absence of such reasons the order must be set aside .... The reasons to be recorded are why he directs compensation to be paid and not why the complaint is false and frivolous or vexatious."

The omission on the part of the President, Sessions Court to record his reasons is in itself a sufficient ground for the setting aside of his order, but for the guidance of magistrates I will also deal with the other aspects of section 185 of the Criminal Procedure Code (S.S.).

The term "frivolous" indicates that the accusation is of a "trivial nature" or is "trifling", "silly," or "without due foundation." The term "vexatious" implies that the accusation is one that ought not to have been made and is intended to harass or annoy the accused. It is only when a magistrate is of the opinion that the accusation against the accused was either frivolous or vexatious that he can act under section 185 of the Criminal Procedure Code. The reason is that this section is not to be applied except in cases which are frivolous or vexatious. It is not intended to be applied in serious cases which are to be dealt with under the provisions of section 211 of the Penal Code. It is for this reason that the magistrate must find that the case is frivolous or vexatious before he has jurisdiction to deal with the matter under section 185. The magistrate should make up his mind whether he considers it to be frivolous or whether he considers it to be vexatious. Frivolty is one thing and vexation is another. It should not be left ambiguous upon which of these two counts the order is being made. But upon whichever grounds the magistrate intends to proceed, it is incumbent upon him to set forth his reasons. The mere fact that the evidence produced by the complainant in support of his allegation is unreliable or inconclusive will not justify the finding that the allegation was either frivolous or vexatious. It must be affirmatively proved that the complainant knew or had good reason to believe that the complaint he was making was either frivolous or vexatious, but where the complainant's case is not an improbable one and he is merely unable to prove his case, it is not proper to hold the complaint to be frivolous or vexatious.

Another feature of the case is that in the court below no evidence was called. The order by the learned president was made merely upon hearing submission of counsel for the accused and the reply thereto by counsel for the Malacca Municipality. In my view, a court can only come to a finding as to whether a complaint is frivolous or vexatious after having heard evidence on oath and not merely upon submission by the parties.

It must be clearly understood that under section 185 of the Criminal Procedure Code (S.S.) a court can only make an order of compensation against the "complainant or the person on whose information the complaint was made." Here, can it be said that the Malacca Municipality falls within this category? Counsel for the Municipality appeared before the court in the case to prosecute an offence under the Municipal Ordinance and such prosecution was undertaken upon some information given to the Municipality. A magistrate can order compensation to be paid by a person to the accused only when the prosecution of the accused was on the complaint of that person or on information given by that person to a Government department or a public authority. So that, strictly speaking, the complainant is the person who makes a complaint or gives information and not the department which undertakes the prosecution. The proper procedure to adopt in proceedings under section 185 of the Criminal Procedure Code (S.S.) is for the court to call upon that person whose complaint or information it considers frivolous or vexatious to show cause why an order for compensation should not be made against him personally. If he fails to show cause, only then would the court be justified in making an order for compensation under section 185 *after* having recorded its reasons for making such order. In my view, there is absolutely no provision for making any order for compensation under section 185 against a prosecuting department whose duty is to prosecute offences that may be disclosed on complaints made or information supplied by its officers or members of the public. I reiterato that orders for compensation under section 185 can be made only against individuals. be they public officers or members of the public, and not against a Government department or public authority which undertakes a prosecution.

For the reasons that I have given above, the order of the learned president must be set aside and, if the sum of $25 has already been paid to the accused, then the accused should refund such sum to the Malacca Municipality.

Order set aside.